PRINCIPAL AND AGENT—SPECIAL AGENT—NOTICE FROM FACE OF CHECK.—Plaintiff gave one *M* his personal check for $1,000, payable to the defendant, with instructions to open an account with the defendant in the plaintiff's name and to have the defendant sell some stock short. *M* opened the account in his own name with this check, and thereafter, after several transactions in the account, it was closed at a loss of $429 and *M* drew out the balance and absconded. In a suit for $1,000, *held,* the defendant was put on notice by the fact that the check was payable directly to him, that *M* did not own the money, and therefore they made payments to *M* at their peril, so that the plaintiff can recover the full amount of the check. *Apostoloff* v. *Levy* (App. Div. 1st Dept. 1919) 174 N. Y. Supp. 828.

The fact that the check was made payable to the defendant without mentioning the name of *M,* while not itself proof of wrong dealing, should at least serve to put the defendant on inquiry as to the real relation between the drawer and *M. Hathaway* v. *County of Delaware* (1906) 185 N. Y. 368, 78 N. E. 153; *cf. Wolffe* v. *State* (1885) 79 Ala. 201; *Quincy Mut. Fire Ins. Co.* v. *International Trust Co.* (1914) 217 Mass. 370, 104 N. E. 845; *contra semble, Bergstrom* v. *Ritz-Carlton Restaurant etc Co.* (1916) 171 App. Div. 776, 157 N. Y. Supp. 959. This alone would serve to prevent any claim of estoppel; and it would appear that the defendants had no right to use this money, which purported to be the plaintiff's, to open an account for *M,* or to pay out funds to him. And although there are many instances where the payee of a negotiable instrument may claim the rights of a holder in due course, 17 Columbia Law Rev. 566, the form of the check in the principal case should be sufficient to put the payee on inquiry as to the authority and exact status of the possessor. If the inquiry would have disclosed nothing wrong, he should be protected, *Munroe* v. *Bordier* (1849) 8 C. B. R. 861, but in the principal case he would have discovered *M's* fraud and is therefore chargeable with knowledge of it. On similar facts, except that the agent was authorized to open the account and carry on transactions in his own name, a prior New York decision held the drawer liable as an undisclosed principal. *Timpson* v. *Allen* (1896) 149 N. Y. 513, 44 N. E. 171. But, in the instant case no such liability can be imposed upon the drawer, since the agent exceeded his authority in using his own name, and also in closing the account, 2 Mechem, Agency (2nd ed.) § 1765, all of which could have been discovered by reasonable inquiry. *Cf. Bristol Knife Co.* v. *First Nat'l. Bank of Hartford* (1874) 41 Conn. 421.

SHERMAN ANTI-TRUST ACT—SYSTEM OF FIXING RESALE PRICES.—An indictment charges that the defendant manufacturer violated the Sherman Act by combining with wholesale and retail dealers for the purpose of fixing resale prices. To effect this design, the wholesale and retail dealers were forced to maintain the stipulated prices by the defendant's threatened refusal to sell to price cutters. *Held,* the indictment, as framed, does not set forth a violation of the Sherman Act because the defendant's system involves no contract in restraint

of trade, but only a proper exercise of independent discretion as to the parties with whom it will deal. *United States* v. *Colgate & Co.* (U. S. Sup. Ct., Oct. Term, 1918, No. 828, June 2nd, 1919).

The court avoided a review of the principles involved in *Dr. Miles' Medical Co.* v. *Park & Sons Co.* (1911) 220 U. S. 373, 31 Sup. Ct. 376, by adopting the construction placed on the indictment by the lower court, which was, that it merely charged a refusal to sell to price cutters. Since the court is bound by the lower court's interpretation of the indictment, a convenient ground for rendering judgment was thus presented. For a discussion of this case see 19 Columbia Law Rev. 149.

STATUTES—FORFEITURE OF PROPERTY—INNOCENCE OF OWNER.—The defendant sent an employee to a distant town with an automobile to get some hardware, but the latter used it instead, without the defendant's knowledge or consent, in removing and concealing liquors with intent to defraud the United States of the tax thereon. A statute (Comp Stat. 1916, § 6352) provided for the forfeiture of all vehicles so used. *Held,* one judge dissenting, that the automobile was forfeited. *United States* v. *Mincey* (C. C. A., 5th Circuit 1918) 254 Fed. 287.

The unauthorized use of another's chattel by one lawfully in possession is as much a conversion of the chattel as a wrongful taking thereof; *Perham* v. *Coney* (1875) 117 Mass. 102; *Woodman* v. *Hubbard* (1852) 25 N. H. 67; see *Beach* v. *R. R.* (1868) 37 N. Y. 457, 468; *Swift* v. *Moseley* (1838) 10 Vt. 208; and it has been generally held under the revenue statutes that the illegal use of converted goods and chattels does not subject the interest of the rightful owner to forfeiture; *Peisch* v. *Ware* (1808) 8 U. S. 347; *United States* v. *1150½ Pounds of Celluloid* (C. C. A. 1897) 82 Fed. 627; *United States* v. *Two Hundred and Eight Bags* (D. C. 1889) 37 Fed. 326; see *Cargo ex Lady Essex* (D. C. 1889) 39 Fed. 765, 767; nor, it would seem, do the unauthorized acts of an employee render his employer liable to a penalty thereunder. *United States* v. *Halberstadt* (D. C. 1832) Fed. Cas. No. 15,276. While public policy dictates that negligence in such cases shall be treated as equivalent to actual intent to defraud, see *United States* v. *Two Barrels Whisky* (C. C. A. 1899) 96 Fed. 479; and, further, that a presumption of guilt shall be raised against a person whose property is actually engaged in an illegal occupation; *United States* v. *One Still* (U. S. C. C. 1867) 5 Blatch. 403; this presumption may nevertheless be rebutted. See *United States* v. *Two Barrels Whisky, supra.* Since the proceedings are criminal in nature, *Boyd* v. *United States* (1886) 116 U. S. 616, it is necessary, according to the better-reasoned line of decisions, to find either intent to defraud or negligence, neither of which was here present. *Six Hundred and Fifty-One Chests of Tea* v. *United States* (C. C. 1826) Fed. Cas. No. 12,916; *United States* v. *Two Hundred and Eight Bags, supra;* see *United States* v. *Curtis* (D. C. 1883) 16 Fed. 184, 189. Hence it is submitted that the principal case is erroneously decided.